



California Fair Political Practices Commission

April 9, 1987

Honorable Larry Stirling
Assemblymember, 77th District
State Capitol
Sacramento, CA 95814

Re: Your Request for Informal
Assistance
Our File No. I-87-077

Dear Assemblymember Stirling:

You have requested advice regarding your duties under the conflict of interest provisions of the Political Reform Act (the "Act").^{1/} Your letter states only a general question; it does not seek advice concerning a specific decision pending before the Legislature. Therefore, we consider it to be a request for informal assistance pursuant to Regulation 18329(c) (copy enclosed).^{2/}

You also requested advice concerning the general ethical responsibilities of an attorney/legislator. The advice we can provide is limited to your duties under the Act. We cannot provide advice concerning other provisions of law, such as the State Bar's Code of Ethics or Government Code Sections 8920-8926. We suggest you contact the State Bar or the Legislative Counsel for advice concerning your other questions.

QUESTION

When is an attorney/legislator required to disqualify himself from participating in governmental decisions?

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Administrative Code Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Administrative Code.

^{2/} Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice concerning a specific issue. (Section 83114; Regulation 18329(c)(3).)

CONCLUSION

An attorney/legislator is required to disqualify himself from participating in governmental decisions which would have a reasonably foreseeable material financial effect, distinguishable from the effect on the public generally, on any of his economic interests.

ANALYSIS

Section 87100 prohibits a public official from making, participating in, or attempting to influence a governmental decision in which he knows or has reason to know he has a financial interest. Section 87100 applies to state legislators, who are public officials within the meaning of Section 87100.^{3/} (Sections 82048, 82049.)

A public official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official or a member of his or her immediate family or on, among other things:

(a) Any business entity in which the public official has a direct or indirect investment worth one thousand dollars (\$1,000) or more.

* * *

(c) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made.

(d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.

Section 87103(a), (c) and (d).

^{3/} However, the remedies provided in the Act for violations of Section 87100 are not applicable to elected state officers, including state legislators. (Section 87102.)

Thus, you are required to disqualify yourself from participating in a particular decision if the decision would have a reasonably foreseeable material financial effect, distinguishable from the effect on the public generally, on (1) yourself, (2) any law firm in which you have an investment interest valued at \$1,000 or more, (3) any law firm or client of your law practice who is a source of \$250 or more in income to you during a 12-month period,^{4/} or (4) any law firm in which you are a director, officer, partner, trustee, employee or hold any position of management. Disqualification would be required even if you would not personally benefit from the transaction. (See Witt v. Morrow (1977) 70 Cal. App. 3d 817.)

You have specifically inquired regarding the Act's application to an attorney/legislator who is "of counsel" to a law firm. We understand that an attorney who is "of counsel" to a law firm generally does not have any ownership interest in the firm. The firm would be a source of income to the attorney, however. So would any client from whom the attorney receives payments for services rendered, whether those payments are received directly from the client or are received by the firm, which then transfers all or a portion of the payments to the attorney.

Foreseeability

The effect of a decision is "reasonably foreseeable" if there is a substantial likelihood that it will occur. Certainty is not required; however, an effect that is only a mere possibility is not "reasonably foreseeable." (Thorner Opinion, 1 FPPC Ops. 198 (No. 75-089, Dec. 4, 1975), copy enclosed.)

Materiality

In determining whether the reasonably foreseeable effect of a decision on an official's economic interests is "material,"

^{4/} Clients of any law firm in which you have a 10-percent or greater ownership interest are considered sources of income to you based on your pro rata share of the gross income the firm receives. (Section 82030(a).) For example, if you have a one-fourth ownership interest in a law firm, any client who has paid the firm \$1,000 or more during the past 12 months is a source of \$250 or more in income to you. (See Carey Opinion, 3 FPPC Ops. 99 (No. 76-087, Nov. 3, 1977); Winnie Advice Letter (No. A-85-212), copies enclosed.)

it is usually necessary to estimate the dollar value of the effect. Specific circumstances under which an effect is material are set forth in the Commission's regulations. (Regulations 18702, 18702.1 and 18702.2, copies enclosed.)

An effect of \$250 or more on the income, assets, or out-of-pocket expenses of the official, or of his or her spouse or dependent children, is material. (Regulation 18702.1(a)(4).) For purposes of determining whether there is a conflict of interest, it does not matter whether the financial effect increases or decreases the income, assets, or expenses.

When an official has an investment in, or receives income from, a business entity (i.e., a law firm), it is necessary to consider how governmental decisions would affect the business entity. An official may be disqualified from participating in a decision even though the decision would not affect the value of his or her investment or the amount of income he or she receives.

Whether an effect on a business entity will be considered material depends on the financial size of the business entity. For example, an effect of only \$10,000 on the gross revenues or assets of a small business is material, while a \$1 million effect on the gross revenues or assets of a Fortune 500 company is material. (Regulation 18702.2.)

Sometimes it is difficult to give a dollar value to the effect of a governmental decision. In such cases, it is necessary to consider whether the decision could significantly affect the official's economic interests. (Regulation 18702(a).) For example, the effect may be material if the decision significantly affects the use or enjoyment of land or other interests, or if the official's receipt of income from a private source is directly related to the decision.

Distinguishable from the Effect on the Public Generally

Regulation 18703 (copy enclosed) provides that a reasonably foreseeable material financial effect on an official's interest is distinguishable from its effect on the public generally unless the decision will affect all members of the public or a significant segment of the public. As a general rule, an industry, trade or profession is not considered a significant segment of the general public. (Regulation 18703.) However, Regulation 18703(a) provides that, for legislators and other elected state officers, a decision which affects all members of an industry, trade or profession in substantially the same manner affects the "public generally." For example, a

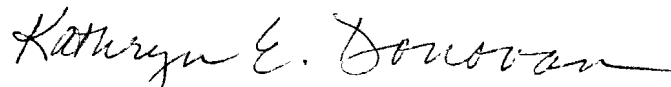
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legislative decision which would affect all attorneys in substantially the same manner would affect a significant segment of the public. (Regulation 18703(a).) In contrast, a legislative decision does not come within the "public generally" exception if it would affect your law practice or one of your sources of income in a manner that is not substantially the same as it would affect others who are similarly situated.

The particular facts of each decision you face will be determinative of the disqualification issue. If you have any questions about a specific decision, please contact me at (916) 322-5901.

Sincerely,

Diane M. Griffiths
General Counsel

A handwritten signature in cursive script that reads "Kathryn E. Donovan".

By: Kathryn E. Donovan
Counsel, Legal Division

DMG:KED:plh
Enclosures

☐ STATE CAPITOL
SACRAMENTO, CALIFORNIA 95814
PHONE: (916) 445-6161

Assembly
California Legislature



LARRY STIRLING
ASSEMBLYMAN, SEVENTY-SEVENTH DISTRICT

☐ 7777 ALVARADO ROAD
SUITE 377
LA MESA CA 92041
PHONE: (619) 237-7777

F P
MAR 5 9 45 AM '87

March 3, 1987

Mr. John H. Larson
Chairman
Fair Political Practices Commission
428 'J' Street, Suite 800
Sacramento, CA 95814

Dear Mr. Larson:

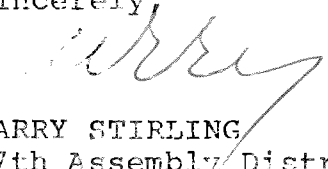
In view of the constant barrage of publicity about legislators and conflicts of interest, I would appreciate it if you would ask your staff to render an opinion.

1. What precisely constitutes a conflict of interest in regards to an attorney-legislator?
2. What are the do's and don'ts of an attorney-legislator?
3. What are the authoritative and relevant publications ^{applicable to} ~~and~~ ~~relations of~~ attorney-legislators?
4. What precisely are the ethical rights and ^{obligations} ~~allegations~~ of an attorney legislator who is "of counsel" with a law firm?
5. What precisely is the status of an attorney-legislator who is "of counsel?"

Your staffs' timely response will go a long way toward helping attorney-legislators avoid problems.

Thank you for your time and attention.

Sincerely,


LARRY STIRLING
77th Assembly District

sf:3/7/87

LS:plm

Representing the People of El Cajon, La Mesa, Lakeside, San Diego and Santee



California Fair Political Practices Commission

March 10, 1987

Assemblyman Larry Stirling
77th Assembly District
State Capitol
Sacramento, CA 95814

Re: 87-077

Dear Assemblyman Stirling:

Your letter requesting advice under the Political Reform Act was received on March 5, 1987 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Kathryn E. Donovan, an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days. You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

A handwritten signature in cursive script that reads "Diane M. Griffiths".

Diane M. Griffiths
General Counsel

DMG:plh